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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,193	10/27/2003	Robert John Carswell	C4262(C)	1160

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EXAMINER

DELCOTTO, GREGORY R

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/694,193

Applicant(s)

CARSWELL, ROBERT JOHN

Examiner

Gregory R. Del Cotto

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 20-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-25 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7-04, 6-04, 2-04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1. Claims 1-25 are pending. Note that, for purposes of restriction, claims 24 and 25, which recite "use of" have been treated as method claims and have been grouped into Group II as set forth below.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-19, drawn to a fabric care composition, classified in class 510, subclass 499.
- II. Claims 20-25, drawn to a method of treating a fabric, classified in class 8, subclass 115.51.

The inventions are distinct, each from the other because of the following reasons:

Inventions of and Group I and Group II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the composition of Group I can be used in a materially different process such as in a method of cleaning dishes.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Alan Bornstein on May 3, 2005, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-19. Affirmation of this election must be made by applicant in replying to this Office action. Claims 20-25 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-14 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by WO98/04772.

'772 teaches fabric care compositions that reduce fabric creasing. See page 1, lines 5-10. Suitable compositions contain a fabric softening compound and 0.01 to 5% by weight of a polycarboxylic acid or derivative thereof having 4 or more carboxyl groups. See page 2, line 30 to page 3, line 5. A preferred polycarboxylic acid is 1,2,3,4 butanetetracarboxylic acid (BTCA). See page 4, lines 20-30. Additionally, the compositions may contain a catalyst compound such as sodium carbonate, sodium dihydrogen phosphate, sodium monohydrogen phosphate, NaH_2PO_2 , etc. It is preferred that the level of catalyst is from 10% to 90% by weight of the polycarboxylic acid or derivative thereof. See page 6, lines 10-25. Silicones can be added to the formulation to enhance wrinkle control and to improve the handle characteristics of the garments. Aminofunctional silicones are particularly effective as well as aminosilicone types. See page 12, lines 5-30. The compositions may also contain one or more optional ingredients such as pH buffering agents, perfumes, perfume carriers, antifoaming agents, enzymes, etc. See page 14, lines 10-25.

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Specifically, '772 teaches a fabric care composition containing 1% BTCA, 0.4% NaH_2PO_2 , 0.05% cationic fabric softener, 0.01% C13-C15 alcohol ethoxylated with 7 moles of ethylene oxide, 0.05% silicone, and the balance water. See page 15, lines 1-15. '772 discloses the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of '772 anticipate the material limitations of the instant claims.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO98/04772.

'772 is relied upon as set forth above. However, '772 does not teach, with sufficient specificity, the use of perfumes in addition to the other requisite components of the composition as recited by instant claim 15.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing perfumes in addition to the other requisite components of the composition as recited by instant claims, with a reasonable expectation of success, because the broad teachings of '772 suggest a composition containing perfumes in addition to the other requisite components of the composition as recited by instant claims.

Claims 1, 2, 6, 9, 12-14, and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 978,556.

'556 teaches a composition for treating fabrics in order to improve various properties of fabrics, in particular, wrinkle resistance by means of a cross-linking resin

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having cationic properties. See Abstract. The composition may contain a fabric softening compound and a cross-linking resin having the property of being cationic. See page 3, lines 20-35. Suitable cross-linking resins having the property of being cationic suitable for use are those commonly known as having wet strength in the paper field and include polyamines, polyethyleneimines, cationic starches, and mixtures thereof. The cross-linking agent may be present in amounts from 0.01 to 30% by weight of the composition. See page 4, lines 1-60. Additionally catalysts may be used and include organic acids such as citric acid, succinic acid, etc. See page 4, lines 50-60. Additionally, a liquid carrier such as water may be used in the compositions as well as surfactants, perfumes, soil release agents, etc. See page 11, line 50 to page 14, line 50. Specifically, '556 teaches a composition containing 50% of a melamine-formaldehyde resin, 5% of a cationic softener, 5% of ethoxylated polyethyleneimine, 5% of a dye fixative, 20% catalyst, and the balance water. '556 discloses the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of '556 anticipate the material limitations of the instant claims.

Claims 3, 4, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 978,556.

'556 is relied upon as set forth above. However, '556 does not teach, with sufficient specificity, a composition containing a polycarboxylic acid, perfume, and emulsifier in addition to the other requisite components of the composition as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a polycarboxylic acid, perfume, and emulsifier in addition to the other requisite components of the composition as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of '556 suggest a composition containing a polycarboxylic acid, perfume, and emulsifier in addition to the other requisite components of the composition as recited by the instant claims.

Claims 1, 3, 4, 9, and 12-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Gutierrez et al (US 5,955,415).

Gutierrez et al teach detergent compositions essentially free of chlorine bleach compounds containing a surfactant, builder, enzyme, peroxygen bleach, and from about 0.001% to about 5% by weight of polyethyleneimine (PEI) or salts thereof. These compositions exhibit controlled and improved bleaching action on stains as well as improved storage stability, fabric safety and whitening/brightening characteristics. See Abstract. Suitable builders include the sodium, potassium, lithium, ammonium, and substituted ammonium salts of NTA, citric acid, etc. See column 15, lines 50-69. Specifically, Gutierrez et al teach heavy duty liquid detergent compositions containing 9% C12-C15 alkyl sulfate, 2.2% sodium citrate, 0.41% polyethyleneimine, 0.2% fragrance, 2% ethanol, the balance water. See column 51, lines 20-45. Note that, as stated on page 8, lines 1-25, compounds such as sodium citrate may function as a polycarboxylic "cross-linking agent" as recited by the instant claims. Gutierrez et al disclose the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teaching of Gutierrez et al anticipate the material limitations of the instant claims.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.


Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
May 12, 2005